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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,439	11/08/2001	Kazuhiko Arimitsu	Q67158	5229
7590	08/02/2004		EXAMINER	
SUGHRUE, MION, ZINN, MACPEAK & SEAS 2100 Pennsylvania Avenue, N.W. Washington, DC 20037			SOBUTKA, PHILIP	
			ART UNIT	PAPER NUMBER
			2684	
DATE MAILED: 08/02/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/986,439	ARIMITSU, KAZUHIRO	
	<b>Examiner</b>	<b>Art Unit</b>	
	Philip J. Sobotka	2684	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,7-9,11 and 12 is/are rejected.
- 7) Claim(s) 4-6 and 10 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3.4.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3,7-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Chang et al (US 2003/0207695).

Consider claim 7. Chang teaches a base station power control apparatus comprising a stored first value of a first block error rate representing predetermined quality (Chang see especially para 9); measuring means for measuring a second block error rate (Chang see especially paras 9,26,27) with a second count (i.e. measurement period) smaller than the first count of the first block error rate (Chang see especially para 30) and power control means for controlling transmission power of a base station on the basis of the second block error rate output from the measuring means (Chang see especially para 26,27).

As to claim 1, the apparatus of Chang would perform the claimed steps.

As to claims 2,8 note that Chang teaches the step size of the power control based on the second, or inner loop power control being less than the first or outer loop power control (Chang see especially para 30-34).

As to claims 3,9 note that Chang teaches increasing power when the error rate is high and decreasing power when the error rate is not higher than a threshold (Chang see especially fig 4, para 31).

#### **Claim Rejections - 35 USC § 112**

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 11 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 11 recites the limitation "third block error rate" in line 4. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 12 recites the limitation "third block error rate" in line 4. There is insufficient antecedent basis for this limitation in the claim.

#### **Allowable Subject Matter**

7. Claims 4-6,10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Consider claim 4. The nearest prior art as shown in Chang fails to teach the method of claim 3 wherein the step of decreasing the power comprises the steps of when the second block error rate is not more than the value, determining whether there is an error in the second count, when a error exists, determining whether a third block error rate obtained from a total cont of second counts repeatedly obtained unit now is

not more than a third expected value set in advance and when the third block error rate is not more than the third expected value decreasing the base station power with the second step width.

Consider claim 10. The nearest prior art as shown in Chang fails to teach the method of claim 9 wherein the determination means determines whether there is an error in the second count when the second block error rate is not more than the second value, and determines whether a third block error rate obtained from a total count of second counts repeatedly obtained is not more than a third expected value set in advance when an error exists, and the power control means decreases the base station power with the second step width when the third block error rate is not more than the third expected value.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hamabe (EP 1128578) has been cited as an English language member of the patent family of WO0027050. Note that this citation does not appear to involve the use of first and second error rates measured in differing time periods (i.e. different execution counts).

Rege (US 6,434,124) has been cited to show a system using varying error rate counts.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip J. Sobutka whose telephone number is 703-305-4825. The examiner can normally be reached on Monday-Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung can be reached on 703-308-7745. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Philip Sobutka  
(703) 305-4825

July 22, 2004

  
NAY MAUNG  
**SUPERVISORY PATENT EXAMINER**